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THE WORKMEN'S COMPENSATION SITUATION IN NEW YORK STATE

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Gentlemen of the Convention:

New York is one of the states in which it has been impossible, as yet, to place upon the statute books a satisfactory Workmen's Compensation Law. A bill of this kind which was passed by the Legislature and approved by the Governor some years ago was subsequently declared by the New York Court of Appeals to be unconstitutional, because it was a compulsory measure. But even if this had not happened, our first attempt at compensation legislation in New York State would not, in the changed condition of thought on this subject, be regarded to-day as a very satisfactory solution of the problem. For one thing, its schedules would be thought much too low. Nor did it contain any provisions ensuring the payment of the compensation which the law gave to injured working men and their dependents for injuries sustained in the course of industrial employments. Judged by modern standards, therefore, this measure which our Court of Appeals declared unconstitutional some years ago would be regarded to-day as an inadequate and unscientific contribution to the great and growing volume of existing law upon this most important subject.

The Court of Appeals' decision above referred to settled the question, however, as to the general form which any future compensation law must take in the State of New York. Until the Constitution of the State of New York is amended, we can have no compensation law in New York except one that is elective in form. Starting with that definitely determined fact, a serious effort was made last winter to pass a satisfactory Workmen's Compensation Law. The purpose of my present remarks is to describe, as briefly as possible, the struggle which ensued, and to indicate some of the reasons why it all came to nothing in the end.

It should be stated in the first place that after the adverse decision of the Court of Appeals upon the so-called Wainwright bill, certain representatives of labor organizations, co-operating with members of the State Senate and Assembly, drafted a pseudo-elective bill which was introduced during the legislative session of 1912 and became known as the Bayne-Sullivan bill. This bill established a high rate of compensation for industrial

accidents, and provided for compulsory insurance through the instrumentality of a state fund. All employers and employees who came within the operation of the proposed law were to make payments into this fund. Employers were given no alternative methods of insuring the compensation payments for which they might become liable. An elaborate new state organism was provided for the supervision and control of the newly created state fund. The credit of the state was not placed behind the proposed fund. The duty rested upon those who collected and disbursed this fund to see to it that enough money was raised by contributions from employers and employees to make the fund adequate to meet any demands which might be made upon it. What we now know as "self-insurance" was not provided for, nor was any recognition given to insurance in stock companies or mutual associations. Employers who elected not to come within the provisions of the act were stripped of their common-law defenses and rendered liable to damages without limit. Some of the advocates of the Bayne-Sullivan bill stated very frankly that they were not so much interested in establishing the principle of compensation in New York as in enlarging the common-law liability of non-assenting employers.

The Bayne-Sullivan bill was passed in the State Senate, but failed of passage in the Assembly. Thus the legislative session of 1912 terminated without effective action with respect to Workmen's Compensation. Realizing that the measure I have mentioned would probably be introduced again in the legislative session of 1913, and believing that the establishment of a monopolistic system of state insurance would be an unwise departure for the State of New York to embark on at this time, I deemed it my duty as Superintendent of Insurance of New York State to undertake, during the summer of 1912, the preparation of a Workmen's Compensation bill conceived on what seemed to be broader and fairer lines than those which had been followed in preparing the measure which had failed of passage earlier in the year. My associates and I approached this work believing that such a task lay well within the province of an efficient and well-manned insurance department. I felt that the whole subject was a technical one, inseparably connected with insurance. I hoped that in presenting a completed bill for legislative consideration, the Insurance Department would be credited with having acted in what it believed to be the interest of the entire state. We certainly had no axes of our own to grind, and

were interested only in establishing in New York the principle of Workmen's Compensation upon as sound a basis as was possible under any bill that is elective in form.

The bill we finally presented to the Legislature was, compared with most other compensation laws in the United States, exceedingly liberal in the rates of compensation which it established. These were fixed at as high a figure as was thought to be compatible with the acceptance of the act by employers. With any higher schedules, we felt that employers would refrain from coming within the operation of the law, and that thus one of our chief purposes — a purpose which has to be constantly borne in mind in the preparation of any elective measure — would be defeated. The bill was not limited to hazardous employments, as was the Bayne-Sullivan measure. It was designed to cover all employments except domestic service and farm labor. It took away the present common-law defenses from employers who rejected its provisions. It required employers to insure their compensation payments, but it allowed them several alternative methods of insurance. As originally drawn, the bill permitted employers of undoubted financial responsibility to carry their own insurance under proper restrictions, and it permitted employers who could not qualify as self-insurers to insure either in stock companies or in mutual employers organizations — the machinery for the establishment of which was provided. All these insurance plans were placed under the jurisdiction of the Superintendent of Insurance. That official was also charged with the duty of seeing that the premiums charged by stock companies and by the new mutuals should be adequate premiums. Our bill, in a general way, followed the plan of the Michigan Law. In its original form it contained no provision, however, for the creation of a state insurance fund.

This bill, which became known during the legislative session of 1913 as the Foley-Walker bill, was introduced in both houses of the New York Legislature at the commencement of the session. Almost immediately thereafter the representatives of organized labor presented, as it was anticipated they would, the so-called Bayne-Sullivan bill of 1912 for renewed consideration. This measure became known, during the session of 1913, as the Murtaugh-Jackson bill. It was changed somewhat from its original form, during the session, but retained until the end most of its distinguishing provisions to which reference has already been made.

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It would be unprofitable at this time to dwell upon the details of the controversy which raged during the entire legislative session of 1913 over the respective merits of these two compensation bills. It developed, before the end, into a very acrimonious controversy indeed. Whether its reverberations extended beyond the limits of New York State I have no means of knowing, but I should not be in the least surprised to hear that they had. Organized labor was alleged by its representatives in Albany to be unanimously opposed to the Foley-Walker bill, and unanimously in favor of the Murtaugh-Jackson bill. The motives of those who favored the Foley-Walker bill were vigorously attacked by these gentlemen. They so far honored me as to file charges against me with the Governor. The measure was represented as having emanated from the casualty companies — as having, in fact, been drawn entirely in their interest. The suggestion was spread broadcast that it would, if enacted, give a monopoly of the business of liability insurance to these companies. Neither of these statements contained even the proverbial grain of truth. The bill was drawn by the Insurance Department, not by the casualty companies; and instead of granting a monopoly to stock companies, in the future writing of liability insurance, it destroyed an existing monopoly which these companies now enjoy in New York State. Evidence was presented, on the other hand, to show that the Michigan Law — with less liberal schedules of compensation than ours, and with the same recognition of stock companies — was working in a manner satisfactory to the labor organizations of the State of Michigan and to the people at large. Similar evidence of the essential fairness of the scheme provided by the Foley-Walker bill was found in the experience of Massachusetts and New Jersey with their present compensation laws. The upshot of the whole fight was that, notwithstanding the protests which the representatives of organized labor addressed to the Legislature, our bill, with one or two amendments, passed both houses and was sent to the Governor for his approval. The chief amendments which the Legislature made in the bill as originally presented were (1) the inclusion of a state-administered fund as a fourth alternative method of insuring compensation payments under the act, and (2) a slight increase in the compensation schedules which were in the bill as at first introduced. This increase — while it slightly chilled the enthusiasm of some employers who had supported the bill in its original form — was

accepted by the great body of employers as, under all the circumstances, fair. The so-called state fund was incorporated in the final draft of the bill as a concession to those opponents of the original measure whose opposition was based upon the fact that it contained no recognition whatever of the principle of State Insurance. It was felt that while this principle could not be accepted in the monopolistic form in which it was advocated by the labor leaders, it could with entire propriety be recognized as one of the alternative forms of permissible insurance under the act.

The Governor vetoed the Workmen's Compensation bill which was passed by the Legislature, for reasons satisfactory to himself, and which were set forth in some detail in his veto memorandum. I need scarcely say that I disagree with the Governor in the view he took of the matter. It is not my intention, however, to complain here about the way in which this important problem was handled last spring by the distinguished Chief Executive of my state. So far as I could grasp his point of view, it was that no legislation on this subject which did not meet with the approval of the gentlemen who represented organized labor at Albany during the legislative session could be regarded as satisfactory. In this I differ with him, although I agree that it is highly desirable that legislation of this sort should have the approval of organized labor. But I cannot lose sight of the fact that the Foley-Walker bill, if it had become a law, would have affected some 2,500,000 workers of the state, and of these only about 400,000 are included in the ranks of organized labor. Unorganized working people are entitled to consideration, too, I respectfully submit. Personally I am inclined, also, to doubt the assertion that the rank and file of organized labor throughout the state were antagonistic to the bill which was passed, despite the assertions of a few labor leaders to that effect. I have every reason to suppose that if our measure had become a law it would have met with approval from the labor organizations of the state, just as a somewhat similar bill did in Michigan. However, Governor Sulzer thought differently, and I have no desire whatever to question his motives, or to cast any doubt upon the lofty patriotism which undoubtedly animated him in what he did.

What interested me greatly in the whole compensation struggle last winter, however, was the curious twist which the representatives of organized labor at the Capitol gave to the discussion before it reached its end in the Governor's veto. We commenced

with the question of Workmen's Compensation, and we ended with the question of State Insurance. We were chiefly concerned, at first, in determining what would be fair in the way of compensation schedules — whether those included in the bill were too liberal, or not liberal enough — whether they were so happily adjusted as to induce employers to accept them, and at the same time prove reasonably satisfactory to injured working men and their dependents. We supposed that these would be regarded as the questions of prime importance in this discussion. We thought that the method of insuring the payment of the compensation provided for in the bill would be regarded more as an interesting matter of detail than as the principal question involved. We felt that this insurance question was one which had to be worked out sensibly and fairly, but we looked on it as to some extent a technical question and one which was a long way removed from being the matter of vital concern to organized labor which the labor men finally declared it to be. Few things have ever surprised me more than the way in which this subordinate feature of the proposed legislation assumed such huge proportions in the minds of the representatives of labor at the Capitol as in the end to blind their eyes completely to the larger issues involved. It would be exceedingly interesting to consider at length how it came about that the discussion took this turn. But this, I think, would involve a much longer talk than I have any intention of inflicting upon you.

The fact is, though, that the whole trouble arose out of what on its face looked like an attitude of settled hostility on the part of laboring men toward the casualty companies — a hostility so virulent and uncompromising that nothing apparently would satisfy it but the extermination of these companies and the substitution of a system of state insurance in their place. The attitude of those who finally induced the Governor to veto our bill was that these companies had been tried and found wanting, and that the time had arrived when they should be put out of business once and for all. The position I took on this subject was that, while there had undoubtedly been many grounds for complaint against these companies in the past, the matters which had created most irritation were things inherent to the present state of our employers liability laws, and that it was scarcely fair to charge all responsibility for these things upon the insurance companies. These things were the inevitable outgrowths of our existing liability laws, and responsibility for them was chargeable

upon our entire citizenship, which permitted these laws to remain upon the statute books. I contended, and I still contend, that such liability laws as we have today in the State of New York are inadequate, archaic, unprogressive and completely out of harmony with the spirit of an advancing civilization. I contended, and I still contend, that the proper thing to do is to abolish the barbarous conditions under which this business has been carried on in the past, and that if this were done it would be quite unnecessary to drive private capital and individual initiative out of the business of employers liability insurance. It seemed to me perfectly plain that the failure of those who are now in the business to give satisfaction to the public had been inevitable from the start, on account of the conditions under which the business has had to be carried on. Under these circumstances, it seemed to me that we ought to change the conditions under which the business was transacted, rather than punish the men in the business for offenses they were not personally responsible for.

At the risk of taking up more of your time than I ought, I should like to explain precisely what I mean when I assert that the existing liability laws of New York are directly responsible for the principal evils which have gradually developed in the business of casualty insurance. Under these laws, a working man who is injured in the course of his employment may demand what he pleases from his employer as compensation for injuries. The law is silent on the subject of what he is entitled to receive. For a comparatively trivial injury, he can claim $50,000, if he chooses. If that does not suit him, he can claim $100,000. The employer against whom such a claim is made has, we will assume, insured himself against such claims in a stock-liability company, and when some ambulance-chasing attorney induces an injured working man to claim excessive and ruinous damages, what usually happens is that the employer turns the claim over to the insurance company whose policy he holds, and he expects the company to shoulder all future responsibility in connection with the entire matter. What under such circumstances is the duty of the insurance company? Shall it pay all claims at their face value? To do so when the law says nothing as to how much the injured man shall receive would spell bankruptcy in a day for the insurance companies and wealth beyond the dreams of avarice for ambulance chasers. Obviously no such course as that is to be expected from companies having the slightest desire to

remain solvent over night. The only other course open to them is to try to settle these claims upon the best possible terms. That of course is what they do, and out of this inevitable procedure, and the litigation which is apt to follow, has developed nearly all the existing dislike for the casualty companies. These conditions, I say, are inevitable in the very nature of the case under our present laws. It ought to be plain to any fair-minded man that their existence is not due to any natural viciousness on the part of casualty insurance men, or to anything essentially disreputable about the liability business itself. Intrinsically speaking, it is a perfectly decent, respectable business, and the men in control of it to-day are perfectly decent, respectable men. That being the situation, the obvious thing to do, it seems to me, is to remedy the conditions under which the business is now being transacted, rather than to destroy the business itself. That is precisely what would have been accomplished if our compensation bill of last winter had become a law. Injured working men and their dependents would then have known precisely what they were entitled to receive, in case of injury. They would have had no right to ask for more than the law gave them; and employers, on their side, could have asked them to take no less. All excuse for controversy would have ceased to exist, and with the excuse gone, the controversies would have soon died out. Under Workmen's Compensation this would come about more or less automatically. But not relying entirely upon the operation of natural laws to protect the laboring man in his future dealings with these insurance companies, our bill went so far as to provide that settlements under the act should become effective only on receiving the approval of an Industrial Board, upon which it was presumed that there would always be representatives of organized labor. Thus were the courts, lawyers and vexatious litigation entirely cut out of the scheme. That is to say, the Industrial Board just mentioned was given exclusive jurisdiction over all disputed questions of fact. Only questions of law in connection with an industrial accident could be taken into the courts. It seemed to me last winter, and it still seems to me, that it would be very much better to write a bill of this kind upon the statute books, than to destroy, in a spirit of resentment over past practices, the only kind of liability insurance which we now have — namely, stock company insurance. It seemed to me that it would be both unwise from the standpoint of the state to do such a thing, and unfair from the standpoint of the companies. It

would have been equally reprehensible, I admit, to have granted a monopoly of this business to the stock companies, but what our bill did was the precise opposite of this. It subjected the stock companies, for the first time, to sharp competition from other insurance organisms. At first we depended upon the newly created mutuals for such competition; subsequently we created the state fund as an additional competitor. So you see that we tried to provide every possible safeguard against the oppression of injured working men and their dependents by the insurance companies. Under our bill, the very best that the stock companies could hope for was an opportunity to prove themselves qualified to give a more satisfactory service to the public, under a Workmen's Compensation Law, than either of the other alternative forms of insurance could give. Unless they could do that, they would inevitably be driven out of business within a few years by the inexorable law of competition. If on the other hand they could demonstrate their ability to do this, it has always been incomprehensible to me why anyone should want these companies to go out of existence.

But notwithstanding all this, the fact is, gentlemen, that the Governor of New York State was sufficiently impressed with last winter's manifestations of a popular hostility toward casualty companies to veto a splendid compensation measure which had been criticized by labor representatives because it gave these companies the chance to prove their right to live, in competition with other insurance organisms. Louder and louder as the fight progressed grew the demand for State Insurance in connection with the payment of industrial claims, until finally the original object of the legislation we advocated — namely, the establishment of the principle of Workmen's Compensation in New York State — was entirely lost sight of and forgotten in the clamor which arose for this new form of socialistic experiment. Precisely what all this betokens for the future is something which thoughtful men connected with the business of insurance had better consider very carefully. In the meantime, we New Yorkers have, as I said in the beginning, our compensation problem still to solve. I look with some degree of envy upon my more fortunate brethren from other states who have succeeded in getting this matter "off their plates," as my friend Appleton would express it, and into the statute books of their respective commonwealths.

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